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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/680,967
Filing Date: October 07, 2003
Appellant(s): ZEHNER ET AL.

Randall W. Fieldhack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/26/08 appealing from the Office action mailed 11/27/06. The examiner's answer below is a copy of the examiner's answer dated 9/4/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Related case 10/680,968 (Appeal No. 2007-1560) was appealed and a decision was reached on 8/21/07, affirming the art rejection and reversing the 112 1st and 2nd paragraph rejections.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 112 1st and 2nd paragraph rejections, (Grounds 1-3 in the Appeal Brief), are withdrawn. Only the art rejection of claims 1-27 remains.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 0650714	COLES	5-1995
6,287,288	OSBORN, III et al	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles, EP 650,714, alone or in the alternative, in view of Osborn III et al, U.S. Patent No. 6,287,288. Coles discloses an absorbent article which comprises a topsheet a back sheet and an absorbent core. The topsheet is permeable. The absorbent article has an elastic composite which can be attached to either the topsheet or the backsheet. The backsheet is impermeable. The elastic composite is formed by attaching the elastic in a relaxed state, (which is equated to the claimed non-tensioned state) to another layer. See abstract. The elastic composite is then activated by stretching it to extend the other layer and activate the elastic layer. See col., 4, lines 14-26. The other layer, which has an extensibility of no more than 5% at a force of between 0.5N/cm and 5 N/cm can be a thermoplastic film, (which is impermeable). See col. 8, lines 6-15. The activated elastic composite then gathers the portions of the absorbent article to which it is attached, which corresponds to the claimed formation of the three dimensional configuration. See col. 4, lines 35-55. The elastic composite can be attached to leg portions, barrier cuffs or waist bands of the absorbent article. See col. 6, lines 9-24. While Coles does not disclose the retraction capability, since Coles teaches forming an elastic composite which can be applied to various regions of the absorbent article where elasticity is desired, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the particular degree of elasticity and thus retraction capability desired in the finished article. With regard to the limitation that the other layer to which the elastic layer is bonded is extensible, it is noted the Coles discloses that the layer is generally inextensible and defines this as being able to extend 5% at a force of between 0.5 and 5 N/cm. If this disclosure is not considered to anticipate the claimed degree of extensibility, Osborn teaches employing an extensible material as either the topsheet, the backsheet or both. See col. 25, lines 6-67. The extensible topsheet and/or backsheet enhances the comfort of the wearer of the absorbent article. Therefore, it would have been obvious to one of ordinary skill in the art to have employed an extensible topsheet or backsheet in the absorbent article of Coles, motivated by the expectation that this would enhance the comfort of the wearer of the absorbent article. The extensible backsheet would correspond to the claimed extensible, impermeable liner material which is associated with the elastic material since the elastic composite of Coles can be bonded to regions to the backsheet of the absorbent article.

(10) Response to Argument

Appellant argues that the all of the elements of Appellant's claimed invention are not taught or suggested in the prior art, because Coles does not teach an extensible, liquid impermeable outer cover and does not teach the claimed retraction capability, but instead teaches an inextensible, liquid impermeable layer. However, Coles does teach that the liquid impermeable outer cover has some degree of extensibility. Further, Osborn clearly teaches that the liquid impermeable backsheet, (i.e., the outer cover), can be made extensible in order to make the absorbent articles which comprise the backsheet more comfortable to wear. The person of ordinary skill in the art would recognize that Coles teaches an absorbent article wherein stretchability can be provided in particular areas, directions, and degrees. Osborn teaches that liner materials can be provided having a greater degree of extensibility in order to enhance the comfort of the wearer of the absorbent article. Therefore, although Coles does have a preference for a less extensible material, the person of ordinary skill in the art would have understood the proper conditions for adding elastically extendable layers to composite materials as taught in both Coles and Osborn, and would have known that liner materials having greater extensibility could have been used as taught by Osborn, in order to provide an absorbent article having stretch in particular areas.

Appellant argues that the purpose or function of the invention of Coles could not be achieved if an extensible layer as taught by Osborn was substituted for the less extensible layer of Coles. However, substituting a more extensible layer as taught by Osborn would not have destroyed the invention of Coles because the intended purpose of Coles is to produce an absorbent article having stretchability in selected areas. Additionally, Coles merely requires that there be a difference in extensibility of the two layers so that the less extensible layer is extended so as to be permanently elongated. Therefore, the extensible layer of Osborn could be combined with the Coles structure in order to improve the comfort of the wearer of the absorbent article by improving the fit, while still maintaining the ability of the extensible layer to be extended to a degree that it is permanently extended in order to form pleats. Also, as long as there was a difference in the extensibility of the two materials, a gathered material would still be formed upon elongation of the composite material as taught by Coles.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Elizabeth M. Cole/

Primary Examiner, Art Unit 1771

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